

LFC Requester:**Kelly Klundt**

**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original ☒ **Amendment** ☐
Correction ☐ **Substitute** ☐

Date 01/19/2016

Bill No: SB84

Sponsor: Senator Linda Lopez

Agency Code: _____

Short Family Violence Act Extended

Person Writing Jason Yamato

Title: Protection Order

Phone: 505.222.9163 **Email** jyamato@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE**BILL SUMMARY**

Senate Bill 84 expands the protections of the Family Violence Protection Act to victims of criminal sexual penetration pursuant to Section 30-9-11 NMSA 1978 (CSP) in two ways. The first way is, upon a conviction for CSP a prosecutor may, in her discretion, request an order of protection from the criminal court. This protective order would remain in effect for the duration of the jurisdiction of the criminal case. The second expansion is to allow for a victim of CSP to petition the court for an order of protection after the expiration of the criminal jurisdiction if there was a previous protective order granted by the criminal court in the matter. The procedure required for the victim to obtain a protective order would be to first file a petition and secondly to submit evidence of that conviction. The court may take judicial notice of the underlying facts of that conviction in making its decision. The victim would not be required to appear, however, should the victim not appear it would be required that another person appear on the victim's behalf. Upon a finding that an order of protection is appropriate the court would be authorized to grant the order for any length of time up to the natural life of the respondent.

FISCAL IMPLICATIONS

N/A.

SIGNIFICANT ISSUES

A hearing for a protective order wherein the individual seeking the order does not appear nor testify may not afford the respondent due process in that hearing. The Bill does allow for the reviewing court to take judicial notice of the facts underlying the conviction. Requiring that the petition be accompanied by "a sworn affidavit setting out specific facts," similar to the requirement imposed by Section 40-13-3 NMSA 1978 would seem to resolve this issue. The second potential issue is that the court may grant an order of protection for any period of time up to the natural lifetime of the respondent. A provision allowing for the review of the order by the court after a period of time, one to five years perhaps, would resolve this potential issue. The standard for lifting the restraining order could require a substantial change in circumstance. The review could also be done by way of pleadings thereby not requiring the petitioner to appear for a hearing every year. The respondent could have the burden to show a substantial change in circumstance.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

In order for the victim to be able to petition the court for the relief contemplated in subsection D of SB 84 the prosecuting attorney must first request a protective order to be issued by the criminal court for the totality of the criminal jurisdiction. Whether or not to make this request is at the discretion of the prosecutor alone. The drafters may wish to consider allowing the victim some discretion in requesting an order of protection in the criminal court for the rare occurrence when the opinions of the prosecutor and the victim differ.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A